ITEM NO: _____7_____ Version Date: December 28, 2001_ _____

ITEM TITLE: County MISP programs and the HIPAA Health Plan Definition

Premise

A Medically Indigent Services Program (MISP) operated by a California county under Section 17000 of the State Welfare and Institutions Code is not a Health Plan as defined by HIPAA.

Reasoning

Definition of the MISP Program*:*
Services for the medically indigent are an unfunded State mandate, and not a State program. The services required by this mandate are addressed in the Welfare and Institutions Code Section 17000 as follows: "Every county and every city and county shall relieve and support all incompetent, poor, indigent persons, and those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not supported and relieved by their relatives or friends, by their own means, or by state hospitals or other state or private institutions." **This Code Section supports the position that the county is unconditionally responsible for those persons identified under this Code as eligible for care.**

Section 17000 further states, "The board of supervisors in any county may adopt a general assistance standard of aid … [but such a] Standard is not intended to either limit or expand the extent of the duty of counties to provide health care." **This Code Section supports the position that the adoption by a board of supervisors of a standard to determine eligibility does not change the duty to provide health care*.***

Code Section 17000.5 is concerned with establishing eligibility and being able to refuse aid. Section 17000.51 continues with "(a) . . .a county's discretion granted pursuant to Section 17000.5 to include, as part of a general assistance aid grant, in-kind aid . . was not intended, and shall not be construed, to do any of the following: (1) Satisfy, in whole or in part, the duty of a county. . .to provide health care services to indigent and dependent poor persons under Section 17000.; (2) Permit a county. . .to cease providing health care services under Section 17000; (3) Affect the eligibility of indigent and dependent poor persons for health care services under Section 17000." **This Code Section appears to support the position that payment of, or payment for, the cost of health care falls short of the principal intent of these Codes to mandate the provision of health care regardless of funding. State funding, if provided, is not intended to limit or create an in-kind service or funding requirement by a county that could serve as a limitation on the duty of a county to provide the mandated care*.***

Definition of a *Health Plan* under HIPAA*:*
Section 160.103 of the HIPAA Rules and Regulations lists 17 types of entities that are included under the definition of a Health Plan. Of these 17 entity types only the following two were thought to possibly include a County MISP program:

1) 160.103 (xvii) states, "[Health Plan includes] any other individual or group plan … that provides or pays for the cost of medical care …".

   To further clarify the definition of an individual or group plan, the preamble states "… many commenters were confused by the statutory inclusion as a health plan of any 'other individual or group plan that provides or pays the cost of medical care;' and they questioned how the provision applied to many government programs. We therefore clarify that while many government programs … provide or pay the cost of medical care, we do not consider them to be individual or group plans and therefore, do not consider them to be health plans. Government funded programs that do not have as their principal purpose the provision of, or payment for, the cost of health care but which do incidentally provide such services are not health plans …".

   The primary focus of a County MISP program is to determine whether the client is truly indigent or services are emergent. Whether or not payment will be made for those services is incidental. The determination of eligibility is provided as a service to the health care provider, and would be conducted whether or not funding is available in compliance with the mandates of the Welfare & Institutions Codes quoted above.

2) 160.103 (xvi) states "[Health Plan includes] a high risk pool that is a mechanism established under State law to provide health insurance coverage or comparable coverage to eligible individuals." Although the term "high risk pool" is not defined within the HIPAA regulations, the preamble does state "High risk pools are designed mainly to provide health insurance coverage for individuals who, due to health status or pre-existing conditions, cannot obtain insurance through the individual market or who can do so only at very high premiums."

   MISP eligibility is not based on health status and pre-existing conditions. Based on what is stated in the preamble, MISP does not appear to be a high risk pool. Further, the intent of the MISP Program as set forth in the Welfare and Institutions Code does not fit the explanation of a high risk pool as set forth in the preamble and serves to further exclude MISP from the definition of a Health Plan.

Reimbursement:
As noted above, the State may provide reimbursement to a county for the mandated

services. Participating health care providers may receive payment on a per case/per claim basis through the various programs that are administered through MISP as well as payment for authorized specialty services. **Although this statement, which is supported by Welfare & Institutions Code Section 17000.51, indicates that reimbursement may actually occur, it fails to provide weight to the position that payment of, or payment for, the cost of health care is a principal intent of these Codes. No guarantee of reimbursement is contained in the Codes or in the County's implementation of the Codes.**

Conclusion: Because a county MISP program is a government program that does not pay for medical care as a principal purpose, and because a county MISP program is not a high risk pool, it does not appear a county MISP program meets the definition of a health plan under HIPAA.

Implications

Since a county's MISP program is not a health plan, it would follow that it is also not a HIPAA covered entity, unless the program provides direct medical care to it's clients. Therefore an MISP program that does not provide direct medical care would not be directly subject to the HIPAA regulations. However, as a business associate of another entity, that is a covered entity, a county's MISP program would be subject to the HIPAA privacy regulations that apply to any business associate.

Consensus Item #5 clarifies that, "The Privacy Rules state that a non-health care component of a hybrid entity becomes part of a health care component of the same hybrid entity whenever the non-health care component enters into a business associate relationship with a health care component, and that relationship involves the use or disclosure of protected health information. Since the hybrid entity definition, and related standards are part of the Privacy Rule, the business associate relationship that makes a County's non-health care component part of a health care component, would not apply outside the Privacy Rules." **MISP would be required to comply with the HIPAA Privacy Rules.**

Since a County MISP program does not meet the HIPAA definition of a health plan, the program would not be required to meet the "Additional requirements for health plans" that are described under 162.925 of the HIPAA rules. More importantly, the rule that states, "If an entity requests a health plan to conduct a transaction as a standard transaction, the health plan must do so", would not apply to a county MISP program. Therefore, the program would not be required to conduct HIPAA covered transactions electronically at the request of other entities that are covered entities. **In fact, a county MISP program that does not provide direct medical care, is not a covered entity would not be required to meet any of the HIPAA Transactions and Code Sets Rules.**

ITEM CHRONOLOGY

Workgroup Draft: __12/28/2001__   Workgroup Approved: _____

Approved Revisions: _____, _____, _____

SUPPLEMENTAL MATERIALS

Links to supporting legal and content expert opinions referenced in text.